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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052150
Party	Defendant Patrick Gilles
Correspondence Address	MATTHEW H. SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVENUE WEST, SUITE 151 VIENNA, VA 22180 UNITED STATES mswyers@TheTrademarkCompany.com
Submission	Opposition/Response to Motion
Filer's Name	Matthew H. Swyers
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Signature	/Matthew H. Swyers/
Date	09/02/2010
Attachments	Rule 56f Motion for Discovery.pdf ( 31 pages )(67213 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3691948  
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92052150
	:	
Patrick Gilles,	:	
	:	
Registrant.	:	

**REGISTRANT’S RULE 56(f) MOTION FOR DISCOVERY**

COMES NOW, the Registrant, Patrick Gilles (hereinafter “Registrant”), by and through counsel, The Trademark Company, PLLC, and files the instant Rule 56(f) Motion for Discovery in lieu of an Opposition to Petitioner Wonderbread 5’s (hereinafter “Petitioner”) Motion for Summary on the Pleadings, or in the Alternative, For Summary Judgment (hereinafter “Motion for Summary Judgment”). For the reasons and on the grounds more fully set forth below Registrant respectfully requests that the Board grant Petitioner’s Rule 56(f) Motion for Discovery and issue an Order directing Petitioner to respond to specific discovery requests submitted by Registrant to Petitioner prior to the filing of Petitioner’s Motion for Summary Judgment.

**STATEMENT OF THE CASE**

1. On or about March 1, 2010 Petitioner instituted the instant Cancellation Proceeding alleging, *inter alia*, that Registrant, an alleged former member of Petitioner and/or Petitioner’s claimed band Wonderbread 5, had left the band, relinquished any and all rights to the name Wonderbread 5 via contract, and had subsequently fraudulently procured the instant registration of the mark before the U.S. Patent and Trademark Office (hereinafter “Office”). *See generally* *Petition for Cancellation* filed March 1, 2010.

2. On or about April 8, 2010 Petitioner, by counsel, filed his *Answer and Grounds of Defense* denying the salient allegations contained in the Petition for Cancellation. *See Answer and Grounds of Defense* filed April 8, 2010.

3. On or about May 11, 2010 the discovery period in this matter opened. *See Scheduling Order* dated March 2, 2010.

4. Due to the complexities of the allegations in the instant matter, including prior civil litigation between the Registrant and the Petitioner which is not of record in the instant matter, Registrant submitted highly specific Interrogatories and Requests for Production of Documents to Petitioner on or about July 12, 2010. *See Registrant's First Set of Interrogatories* and *Registrant's First Set of Requests for Production of Documents* attached as Exhibits A and B.

5. Registrant had thirty-five (35) days to respond to Petitioner's discovery requests or until August 16, 2010.

6. To date no responses to Petitioner's discovery have been received.

7. However, on or about July 30, 2010 Petitioner filed the instant Motion for Summary Judgment seeking judgment, as a matter of law, upon many of the subjects contained in Registrant's July 12, 2010 discovery to Petitioner.

8. The instant motion is now filed in response to Petitioner's Motion for Summary Judgment.

## **ARGUMENT**

A party that believes that it cannot effectively oppose a motion for summary judgment without first taking discovery may file a request with the Board for time to take the needed discovery. TBMP § 528.06. *See also* Fed. R. Civ. P. 56(f). *See generally* *Opryland USA Inc. v. The Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992)(finding sufficient need for discovery). The request must be supported by an affidavit showing why the non-moving party cannot, for reasons stated therein, present by affidavit facts essential to justify its opposition to the motion.

At the outset of this matter the Board should be aware that the facts of this case, from a mere cursory review, reveal that this is not a straight-forward 2(d) or 2(e)(1) matter. Rather, it is a fact-intensive case revolving around the formation of a band, use of a band's name in commerce for years, ownership rights as a result thereof, a separate civil suit which settled with little or no actual documentation memorializing the settlement or the terms thereof, as well as further allegations of malfeasance by Petitioner against the Registrant.

At its core element, however, the instant Motion for Summary Judgment can be primarily distilled down into two simple allegations:

1. Registrant retains no rights in the trademark WONDERBREAD 5 because he sold all interest in the mark to the Petitioner as part of a settlement of a prior lawsuit filed in San Francisco Superior Court; and
2. Registrant committed fraud upon the Office in the registration of the instant mark by submitting a signed declaration in support of his application stating that he knew of no other person or entity that had the right to use the mark apart from the Registrant.

In regard to the second allegation, further discovery on this point is not needed as a response to this claim could be remedied both at law as well as by an affidavit submitted by the Registrant. However, if a substantive response is submitted under the applicable rules this response would be transformed into a substantive response to Petitioner's Rule 56 Motion for Summary Judgment. As such, and given the below issues, Registrant respectfully defers this response pending the outcome of the instant Rule 56(f) motion as discovery is required to effectively respond to the first allegation of Petitioner's Motion for Summary Judgment set forth above.

Turning to the first allegation, Petitioner attempts to rush through the facts before the Board stating that there was a civil lawsuit filed by Registrant over his departure from the band, the band did not wish to see the case through to trial, and instead paid Registrant for his entire "interest" in the band thus implying a sale of intellectual property rights of the mark at issue. *Motion for Summary Judgment* at p. 4.

What Petitioner fails to bring to the Board's attention is that the civil lawsuit was, in essence, a wrongful termination suit which did not address any of the trademark issues currently before the Board. *See generally Complaint* attached as Exhibit A to Petitioner's *Motion for Summary Judgment*.

Undaunted by this lack of relevance, Petitioner continues in its *Motion for Summary Judgment* to allege that Registrant sold his entire interest in the mark to Petitioner as a result of the settlement of this civil action which, once again, on its face had nothing to do with trademark rights to the term WONDERBREAD 5.

The only evidence attached in support of this allegation is the self-serving *Declaration of David M. Given in Support of Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment, Defendant's Offer to Compromise* (Exhibit B to *Motion for Summary Judgment*), *Correspondence dated September 15, 2009 to Registrant's (Then) Counsel* (Exhibit C to *Motion for Summary Judgment*), and the fully executed *Defendant's Offer to Compromise* (Exhibit D to *Motion for Summary Judgment*). However, Petitioner has failed to attach any agreement or even a scintilla of evidence that Registrant knowingly intended to transfer his rights to the mark WONDERBREAD 5 to Petitioner by signing *Defendant's Offer to Compromise* thus concluding his wrongful termination suit against Petitioner.

In sum, Petitioner's motion, in large part, depends upon three critical assumptions: (1) that it owned rights to the mark WONDERBREAD 5 as of September 3, 2009 and October 1, 2010, the respective relevant dates for *Defendant's Offer to Compromise*, (2) that the underlying lawsuit dealt with or otherwise affected trademark rights in the mark WONDERBREAD 5, and (3) that Registrant, in executing *Defendant's Offer to Compromise* intended to transfer all rights in the mark WONDERBREAD 5 to Registrant.

Despite Registrant's discovery requests Petitioner has failed to produce any and all agreements, information, or otherwise between Petitioner and Registrant that would establish the above three assumptions. Herein lies the critical need for discovery and, correspondingly, for the Board to grant Registrant's motion.

Petitioner seeks to frustrate the discovery process and go straight to a decision as a matter of law by assuming facts not in evidence supported by documents of questionable relevance in an effort to strip

Registrant of rights they claim, although have no evidence, were transferred to their ownership. This type of litigation is the very reason why Rule 56 (f) exists.

If Registrant attempted to support its side of the case with a mere affidavit denying the above the quality of his response would be severely prejudiced. Registrant is entitled to discover what evidence Petitioner retains on these points under the rules. To allow Petitioner to ram this into a posture of summary judgment without responding to Registrant's timely and very relevant discovery requests thwarts the legitimate efforts by Registrant to effectively establish his defenses in this matter including, but not limited to, having the Petitioner admit, in discovery, they have no documents that support their theory that Registrant transferred any intellectual property rights to the Petitioner by signing *Defendant's Offer to Compromise* (emphasis added).

In short, this is why Petitioner seeks to have a quick summary disposition of this matter. They do not want to admit, on the record, that no such agreement exists for if it does not they cannot establish a transfer of rights ever occurred.

Registrant is entitled to this information. Registrant needs this information to effectively respond to the instant motion. In the absence of this discovery, Registrant would only be permitted to let this motion come down to his word versus Petitioner's whereas with discovery the Board will see a response that not only retains Registrant's word but Registrant's word supported by Petitioner's self-defeating admissions.

As such, the instant motion must be granted. Petitioner must be required to answer Registrant's requests for discovery as those answers are the only way Registrant can effectively respond to Petitioner's baseless motion.

Returning to the requirements for a Rule 56(f) motion to be granted, a party that believes that it cannot effectively oppose a motion for summary judgment without first taking discovery may file a request with the Board for time to take the needed discovery. TBMP § 528.06. *See also* Fed. R. Civ. P. 56(f). *See generally* *Opryland USA*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992). The request must

show why the non-moving party cannot present facts essential to justify its opposition to the motion in the absence of the requested discovery.

Registrant, through the above and by the attached declaration in support of the instant motion, cannot effectively respond to the instant motion concerning Petitioner's alleged rights in the mark WONDERBREAD 5 as well as what, if any, rights of Registrant were transferred to Petitioner through *Defendant's Offer to Compromise* without the requested discovery.

On these points, prior to the instant motion Registrant had crafted and submitted to Petitioner specifically detailed interrogatories the response to which by Petitioner are critical to Petitioner's ability to adequately respond to Registrant's *Motion for Summary Judgment*. Specifically on point are interrogatories numbers 2-3, 6, 8, 10-20. Moreover, Registrant had crafted similar specific Requests for Production of Documents numbers 1-2, 6-7, and 12-14. Responses to these specific interrogatories and requests for production of documents will enable Registrant to adequately respond to the instant *Motion for Summary Judgment*.

In closing, should the instant Rule 56(f) motion be granted no undue prejudice will result to Petitioner as any party in the position of a plaintiff in a civil matter must reasonably expect to participate in discovery under the rules of procedure. However, if Registrant's Rule 56(f) motion is denied significant undue prejudice will be imposed upon Registrant by sanctioning Petitioner's intentional frustration of the discovery efforts by Registrant to discover evidence that is necessary for Registrant to provide his opposition to the instant *Motion for Summary Judgment*.

WHEREFORE in response to the instant *Motion for Summary Judgment* Registrant, by counsel, respectfully requests the Board to forego a ruling on the motion and grant *Registrant's Rule 56(f) Motion for Discovery* ordering the Petitioner to provide full and complete responses to interrogatories 2-3, 6, 8, 10-20 as well as requests for production of documents 1-2, 6-7, and 12-14 prior to Registrant being required to respond to the *Motion for Summary Judgment*.

Respectfully submitted this 2<sup>nd</sup> day of September, 2010.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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Matthew H. Swyers, Esquire  
344 Maple Avenue West, Suite 151  
Vienna, VA 22180  
Telephone (800) 906-8626 ext. 704  
Facsimile (270) 477-4574  
mswyers@TheTrademarkCompany.com  
Attorney for Registrant Patrick Gilles



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3691948  
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92052150
	:	
Patrick Gilles,	:	
	:	
Registrant.	:	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing motion this 2<sup>nd</sup> day of September, 2010, to be served, via first class mail, postage prepaid, upon:

Meagan McKinley Ball  
Phillips, Erlewine & Given LLP  
50 California Street, 35th Floor  
San Francisco, CA 94111

/Matthew H. Swyers  
Matthew H. Swyers

## **Declaration of Matthew H. Swyers**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3691948  
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92052150
	:	
Patrick Gilles,	:	
	:	
Registrant.	:	

**DECLARATION OF MATTHEW H. SWYERS IN SUPPORT OF  
REGISTRANT’S RULE 56(F) MOTION FOR DISCOVERY**

1. I am the general counsel of The Trademark Company and counsel of record for Registrant Patrick Gilles in the above-captioned matter.

2. I hereby state the following to be known personally to me concerning the facts and circumstances surrounding Petitioner’s Motion for Summary Judgment:

- a. On or about March 1, 2010 Petitioner instituted the instant Cancellation Proceeding alleging, *inter alia*, that Registrant, an alleged former member of Petitioner and/or Petitioner’s claimed band Wonderbread 5, had left the band, relinquished any and all rights to the name Wonderbread 5 via contract, and had subsequently fraudulently procured the instant registration of the mark before the U.S. Patent and Trademark Office (hereinafter “Office”). *See generally Petition for Cancellation* filed March 1, 2010.
- b. On or about April 8, 2010 Petitioner, by counsel, filed his *Answer and Grounds of Defense* denying the salient allegations contained in the Petition for Cancellation. *See Answer and Grounds of Defense* filed April 8, 2010.
- c. On or about May 11, 2010 the discovery period in this matter opened. *See Scheduling Order* dated March 2, 2010.
- d. Due to the complexities of the allegations in the instant matter, including prior civil litigation between the Registrant and the Petitioner which is not of record in the instant matter, Registrant submitted highly specific Interrogatories and Requests for Production of Documents to Petitioner on or about July 12, 2010. *See Registrant’s First Set of Interrogatories* and *Registrant’s First Set of Requests for Production of Documents* attached as Exhibits A and B.

- e. Registrant had thirty-five (35) days to respond to Petitioner's discovery requests or until August 16, 2010.
- f. To date no responses to Petitioner's discovery have been received.
- g. However, on or about July 30, 2010 Petitioner filed the instant Motion for Summary Judgment seeking judgment, as a matter of law, upon many of the subjects sought to be discovered in Registrant's July 12, 2010 discovery to Petitioner.
- h. The instant Motion for Summary Judgment can be distilled down into two simple allegations:
  - 1. Registrant retains no rights in the trademark WONDERBREAD 5 because he sold all interest in the mark to the Petitioner as part of a settlement of a prior lawsuit filed in San Francisco Superior Court; and
  - 2. Registrant committed fraud upon the Office in the registration of the instant mark by submitting a signed declaration in support of his application stating that he knew of no other person or entity that had the right to use the mark apart from the Registrant.
- i. In regard to the second allegation, further discovery on this point is not needed as a response to this claim could be remedied both at law as well as by an affidavit submitted by the Registrant. However, if such were done under the rules that would transform this response into a substantive response to Petitioner's Rule 56 Motion for Summary Judgment. As such, and given the below issues, Registrant respectfully declines to do so pending the outcome of the instant Rule 56(f) motion as discovery is required to effectively respond to the first allegation of Petitioner's motion for summary judgment.
- j. Turning to the first allegation, Petitioner attempts to rush through the facts before the Board stating that there was a civil lawsuit filed by Registrant over his departure from the band, the band did not wish to see the case through to trial, and instead paid Registrant for his entire "interest" in the band implying a sale of intellectual property rights of the mark at issue. *Motion for Summary Judgment* at p. 4. What Petitioner fails to bring to the Board's attention is that the civil lawsuit was, in essence, a wrongful termination suit which did not address any of the trademark issues currently before the Board. *See generally Complaint* attached as Exhibit A to Petitioner's *Motion for Summary Judgment*.
- k. Petitioner's motion, in large part, depends upon three critical assumptions: (1) that it owned rights to the mark WONDERBREAD 5 as of September 3, 2009 and October 1, 2010, the respective relevant dates for *Defendant's Offer to Compromise*, (2) that the underlying lawsuit dealt with or otherwise affected trademark rights in the mark WONDERBREAD 5, and (3) that Registrant, in executing *Defendant's Offer to Compromise* intended to transfer all rights in the mark WONDERBREAD 5 to Registrant.

- l. Registrant is entitled to discover what evidence Petitioner retains on these points under the rules. To allow Petitioner to ram this into a posture of summary judgment without responding to Registrant's timely discovery requests thwarts the legitimate efforts by Registrant to effectively establish his defenses in this matter including, but not limited to, having the Petitioner admit, in discovery, they have no documents that support their theory that Registrant transferred any intellectual property rights to the Petitioner by signing *Defendant's Offer to Compromise* (emphasis added).
- m. Registrant needs this information to effectively respond to the instant motion. In the absence of this discovery, Registrant would only be permitted to let this motion come down to his word versus Petitioners whereas with discovery the Board will see a response that not only retains Registrant's word but Registrant's word supported by Petitioner's self-defeating admissions.
- n. Petitioner must be required to answer Registrant's requests for discovery as those answers are the only way Registrant can effectively respond to Petitioner's baseless motion.
- o. Registrant cannot effectively respond to the instant motion concerning Petitioner's alleged rights in the mark WONDERBREAD 5 as well as what, if any rights of Registrant were transferred to Petitioner through *Defendant's Offer to Compromise* in the absence of answers and responses to Registrant's discovery to Petitioner and, in particular, interrogatories numbers 2-3, 6, 8, 10-20 and Requests for Production of Documents numbers 1-2, 6-7, and 12-14.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting there from, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: September 2, 2010

/Matthew H. Swyers/  
Matthew H. Swyers

## **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3,691,948,  
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92052150
	:	
Patrick Gilles,	:	
	:	
Registrant,	:	

**REGISTRANT’S FIRST SET OF INTERROGATORIES TO OPPOSER**

TO:           Wonderbread 5, c/o David M. Given, Phillips, Erlewine & Given LLP, 50  
                  California Street, 35<sup>th</sup> Floor, San Francisco, CA 94111.

FROM:       Matthew H. Swyers, Esq., The Trademark Company, PLLC, 344 Maple Avenue  
                  West, Suite 151, Vienna, VA 22180.

COMES NOW Registrant, Patrick Gilles (hereinafter “Registrant”), by and through counsel, The Trademark Company, PLLC, in accordance with the applicable Federal Rules of Civil Procedure and the TBMP, and propounds the following interrogatories upon Wonderbread 5 (hereinafter “Petitioner”) to be answered within the time provided by the applicable rules of court.

**DEFINITIONS**

- A.       The term “Registrant” shall mean Patrick Gilles, and/or any present or former servant, agent, attorney or other representative acting on his behalf.
- B.       The term “**Petitioner**” shall mean **Wonderbread 5** and any present or former licensee, officer, director, employee, servant, agent, attorney or other representative acting on its

behalf, and shall include predecessors or successors either within the United States or a foreign country.

C. The term “trademark” or “mark” includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

D. The term “in the U.S.” shall mean use in interstate and/or intrastate commerce in the United States.

E. The term “Registrant’s Mark” refers to the mark WONDERBREAD 5 as identified in U.S. Trademark Registration No. 3,691,948.

F. The term “Petitioner’s Claimed Mark” refers to the term WONDERBREAD 5 as claimed to be a mark by Petitioner in the subject of the Petition to Cancel.

G. The term “you” shall mean the party or person to whom these interrogatories are propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom these interrogatories are propounded has the right to or does control or direct and activities.

H. The phrase “legal action” shall mean submission of correspondence to the Registrant or any third party not a party to this proceeding requesting that they cease use of a mark, or institution of any legal proceeding in the United States Patent and Trademark Office, state, or federal court or agency.

I. The term “live” shall mean currently registered with the U.S. Patent and Trademark Office and not dead as it applies to abandoned, cancelled, or successfully opposed trademarks.

J. The term “the band” shall mean the band Wonderbread 5, of which both Registrant and Petitioner were members.



### **INTERROGATORIES**

**INTERROGATORY NO. 1:** State in detail the nature of the business, operations, and activities conducted by Petitioner.

**ANSWER:**

**INTERROGATORY NO. 2:** Identify each person who has knowledge of Petitioner's selection and adoption of Petitioner's Claimed Mark and who has knowledge of how it is used and how it is intended to be used.

**ANSWER:**

**INTERROGATORY NO. 3:** Describe in detail all goods and services formerly and currently being offered by Petitioner in conjunction with Petitioner's Claimed Mark, identify the dates on which Petitioner first began such use(s), the geographic areas in which such use occurred, and the individuals who provided those services.

**ANSWER:**

**INTERROGATORY NO. 4:** Describes any periods since Petitioner's alleged date of first use, as set forth in the preceding paragraph, during which Petitioner did not make use of Petitioner's Claimed Mark.

**ANSWER:**

**INTERROGATORY NO. 5:** With respect to each good and/or service identified in your response to Interrogatory No. 3, state the annual sales in units and dollars from the date of first use of each good and/or service.

**ANSWER:**

**INTERROGATORY NO. 6.:** With respect to each good and/or service identified in your response to Interrogatory No. 3, describe in detail the manner in which Petitioner's Claimed Mark is promoted in the United States, including but not limited to the media and mode of any marketing efforts as well as the geographic regions in which said promotions are conducted. Further identify who has been responsible for the promotion of Petitioner's Claimed Mark from the alleged date of first use to the present.

**ANSWER:**

**INTERROGATORY NO. 7:** For each medium identified in the preceding interrogatory, state the annual expenditure for advertising and promotion since inception.

**ANSWER:**

**INTERROGATORY NO. 8:** Identify the person or persons who, from the date of Petitioner's claimed first use(s) of Petitioner's Claimed Mark to the present, have been responsible for the marketing and/or promotion of Petitioner's goods and services under Petitioner's Claimed Mark indicating the period during which each person was so responsible.

**ANSWER:**

**INTERROGATORY NO. 9:** Identify all advertising agencies, public relations agencies or market research agencies that Petitioner has used, participated with or cooperated with in advertising, marketing or promoting the goods/services identified in response to Interrogatory No. 3, and indicate the time period(s) during which such activities were conducted.

**ANSWER:**

**INTERROGATORY NO. 10:** Describe in detail any adversarial proceeding, challenge, or litigation involving Petitioner's Claimed Mark, Registrant's membership in Petitioner, or Registrant's ownership of the mark at issue, including the claims, defenses, and a description of the resolution thereof.

**ANSWER:**

**INTERROGATORY NO. 11:** Identify all persons who have knowledge concerning Petitioner's selection, adoption and/or use of Petitioner's Claimed Mark for any products and services and provide a summary of each person's knowledge thereof.

**ANSWER:**

**INTERROGATORY NO. 12:** Identify all persons or parties, past and present, that are or were members of the band Wonderbread 5, state the dates of their membership in the band and whether said membership was memorialized in any writing, documents, or otherwise.

**ANSWER:**

**INTERROGATORY NO. 13:** Describe in detail any partnership agreement that existed between Registrant and Petitioner or any other party with regard to the band Wonderbread 5.

**ANSWER:**

**INTERROGATORY NO. 14:** Identify all persons or parties, past and present, that were part of any partnership agreement with regard to the band Wonderbread 5.

**ANSWER:**

**INTERROGATORY NO. 15:** Describe in detail the process during which the name of the band “Wonderbread 5” was selected.

**ANSWER:**

**INTERROGATORY NO. 16:** Identify any persons or parties present during the conception and/or selection of the band name “Wonderbread 5,” including, but not limited to, how the name was created, how the name was chosen to be the name of the band, the names of

the band members at the time of the selection of the name and who Petitioner contends owned or controlled the name at the time of its adoption.

**ANSWER:**

**INTERROGATORY NO. 17:** Describe in detail the civil litigation dispute between Registrant and Petitioner, including the details of any settlement agreement between Registrant and Petitioner.

**ANSWER:**

**INTERROGATORY NO. 18:** Identify any and all persons and/or parties who signed any settlement agreement for the civil litigation dispute referenced in Interrogatory No. 17.

**ANSWER:**

**INTERROGATORY NO. 19:** Describe in detail any agreement regarding ownership of the rights of the mark WONDERBREAD 5.

**ANSWER:**

**INTERROGATORY NO. 20:** Identify those individuals or the entity you contend owns the subject mark WONDERBREAD 5 from the date of first use to the present specifically indicating the original owner(s) or entity of the mark, any changes in ownership which have occurred, and who or what entity you contend currently owns the mark and why.

**ANSWER:**

DATED this 12<sup>th</sup> day of July, 2010

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/  
Matthew H. Swyers, Esq.  
344 Maple Avenue West, Suite 151  
Vienna, VA 22180  
Telephone (800) 906-8626 x704  
Facsimile (270) 477-4574  
mswyers@TheTrademarkCompany.com  
Attorney for Registrant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3,691,948,  
For the mark WONDERBREAD 5,

Wonderbread 5,

Petitioner,

vs.

Patrick Gilles,

Registrant.

:  
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:  
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:  
:

Cancellation No. 92052150

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing First Set of Interrogatories to  
be served on this 12<sup>th</sup> day of July, 2010 via first-class mail upon the following:

Meagan McKinley-Ball  
Phillips, Erlewine & Given, LLP  
50 California Street, 35<sup>th</sup> Floor  
San Francisco, CA 94111

/Matthew H. Swyers/

Matthew H. Swyers



## **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3,691,948,  
For the mark WONDERBREAD 5,

Wonderbread 5,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92052150
	:	
Patrick Gilles,	:	
	:	
Registrant.	:	

**REGISTRANT’S FIRST REQUESTS FOR**  
**PRODUCTION OF DOCUMENTS TO PETITIONER**

TO: Wonderbread 5, c/o David M. Given, Phillips, Erlewine & Given LLP, 50  
California Street, 35<sup>th</sup> Floor, San Francisco, CA 94111.

FROM: Matthew H. Swyers, Esq., The Trademark Company, PLLC, 344 Maple Avenue  
West, Suite 151, Vienna, VA 22180.

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and TBMP §408,  
Registrant Patrick Gilles (hereinafter “Registrant”) requests that Petitioner Wonderbread 5  
(hereinafter “Petitioner”) produce and permit Registrant to inspect and copy the Documents (as  
described hereinafter) and things designated below at The Trademark Company, PLLC, 344  
Maple Avenue West, Suite 151, Vienna, VA 22180 within the time permitted by the applicable  
rules.

**DEFINITIONS**

A. “Documents” includes “things” and is defined in the broadest sense permitted by  
the Federal Rules of Civil Procedure and the Trademark Rules of Practice, including without  
limitation, written documents, audio or video recordings, and computer data together with

printouts of screen displays. “Documents” includes each writing or record not identical to the original.

B. The term “Registrant” shall mean Patrick Gilles, and/or any present or former servant, agent, attorney or other representative acting on his behalf.

C. The term “Petitioner” shall mean Wonderbread 5 and any present or former licensee, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include predecessors or successors either within the United States or a foreign country.

D. “Person(s)” means any individual, firm, partnership, corporation, proprietorship, association, governmental body or any other organization or entity.

E. “Concerning” means relating to, referring to, describing, evidencing or constituting.

F. The term “Petitioner’s Claimed Mark” refers to the terms WONDERBREAD 5 as claimed to be a mark by Petitioner in the subject Petition to Cancel.

### **REQUESTS FOR PRODUCTION**

With respect to any Document specified below for which a claim of privilege or work product is made, please indicate the nature of the Document; identify the name, address, occupation, title and business affiliation of the writer, the addressee and all recipients thereof, the general subject matter to which the Document relates, and its date.

The Documents designated for production are the following:

1. All Documents evidencing, referring, or relating to the selection or adoption by Petitioner of Petitioner’s Claimed Mark.

### **RESPONSE:**

2. Documents sufficient to identify each Person who participated or was involved in the selection of Petitioner's Claimed Mark, and with respect to each Person so identified, the nature and scope of his or her involvement.

**RESPONSE:**

3. A copy of San Francisco Superior Court's stamped and dated "Defendant's Answer to Complaint for Damages and Equitable Relief: Constructive Fraud, Case No. CGC-09-487573".

**RESPONSE:**

4. A copy of San Francisco Superior Court's stamped and dated "Defendant's Offer to Compromise, Case No. CGC-09-487573".

**RESPONSE:**

5. A copy of San Francisco Superior Court's stamped and dated "Notice of Deposition of Plaintiff Patrick Gilles," Case No. CGC-09-487573".

**RESPONSE:**

6. A copy of any document purporting to convey, sell, and/or release Registrant's ownership and control of Registrant's Mark WONDERBREAD 5 to any party, entity, or otherwise.

**RESPONSE:**

7. A copy of the letter Document from Mr. David M. Given to Douglas B. Wroan dated September 15, 2009 which states in part "as previously discussed, the band has no assets (known), liabilities (and therefore no liquidation value), and no balance sheet or income statement available."

**RESPONSE:**

8. A copy of San Francisco's Superior Court's stamped and dated copy of the "Offer to Compromise CA CORPORATION CODE 16701 (G) (1) (2) (3) (4)," Case No. CGC-09-487573.

**RESPONSE:**

9. All Documents pertaining to Wonderbread 5's advertising and marketing materials posted online or distributed by Petitioner after October 22, 2009, including but not limited to hand bills, flyers, posters, and guitar picks containing Registrant's photo image, video image, phone number, or address.

**RESPONSE:**

10. The Document sent electronically by David M. Given to Douglas Wroan on Thursday, October 1, 2009 at 4:46pm which states in part “I do not want to put the client to the expense of spending the appearance fees. I believe we can transact the remainder of this matter without the formality of filing the 998 with the court.”

**RESPONSE:**

11. Any and all Documents evidencing actual confusion as noted in the Petition to Cancel when Petitioner claims, “the Band received many calls and emails from fans and clients inquiring as to why Registrant appeared to be operating under the Wonderbread 5 name.”

**RESPONSE:**

12. Any and all Documents evidencing that the band Wonderbread 5 operated as a general partnership as claimed in the Petition to Cancel.

**RESPONSE:**

13. Any and all Documents pertaining to the creation and/or selection of the band name Wonderbread 5.

**RESPONSE:**

14. Any and all Documents pertaining to the ownership of Wonderbread 5's intellectual property.

**RESPONSE:**

DATED this 12<sup>th</sup> day of July, 2010

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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Attorney for Registrant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of Trademark Registration No. 3,691,948,  
For the mark WONDERBREAD 5,

Wonderbread 5,

Petitioner,

vs.

Patrick Gilles,

Registrant.

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Cancellation No. 92052150

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing Request for Production of  
Documents to be served on this 12<sup>th</sup> day of July, 2010 via first-class mail upon the following:

Meagan McKinley-Ball  
Phillips, Erlewine & Given, LLP  
50 California Street, 35<sup>th</sup> Floor  
San Francisco, CA 94111

/Matthew H. Swyers/

Matthew H. Swyers